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July 23, 2008

Phil Isenberg, Chair  
Delta Vision Blue Ribbon Task Force  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

**Re: Delta Vision Strategic Plan – Second Staff Draft dated July 11, 2008**

Dear Chair Isenberg:

On behalf of the thirty-one member counties of the Regional Council of Rural Counties (RCRC), I am pleased to submit for your consideration comments on the Second Staff Draft Delta Vision Strategic Plan dated July 11, 2008.

**Governance and Finance**

The Delta Vision Blue Ribbon Task Force proposes a multi-part governance structure as follows:

- California Delta Ecosystem and Water Council
- Delta Operations Team
- California Water Utility
- Delta Protection Commission (refashioned)
- Delta Conservancy
- Delta Science Program
- Delta Science and Engineering Board
- Public Advisory Group

RCRC is still reviewing the proposed governance structure as a whole, however, we must voice our concern about the proposed significant expansion of the bureaucracy and its associated costs in both time and money.

RCRC submits the following preliminary comments and observations for your consideration:

**Introduction.** The introduction of the draft Strategic Plan states “...it is easy to forget that our state actually enjoys great abundance, including a generous endowment of water and diverse ecosystems.” (emphasis added) (Page 15)

RCRC does not believe this statement is accurate. We suggest that this sentence be revised to more accurately reflect current reality.

**Transparency.** The draft Strategic Plan states that the appointment process for the California Delta Ecosystem and Water Council (Council) should be transparent to the public. (Page 17) The document fails, however, to discuss transparency as it relates to the functioning of the proposed Council.

**California Delta Ecosystem and Water Plan.** The draft Strategic Plan lists the proposed responsibilities and powers of the Council, including the development of a California Delta Ecosystem and Water Plan (CDEW Plan). (Page 17). Please see comments that follow relating to the content of the CDEW Plan.

**Public Advisory Group.** The draft Strategic Plan lists groups that must be included in the membership of the proposed Public Advisory Group (PAG). Representatives from upstream areas-of-origin should specifically be included among the group of “public constituencies that must be represented” on the PAG. (Page 18)

**State Interests.** The draft Strategic Plan states that the Council will protect “state interests” in the CDEW Plan and that the refashioned Delta Protection Commission’s (DPCs) primary new role will be to ensure the consistency of local government plans and decisions with the state interests articulated in the Plan. (Page 18)

As you know, the local elected representatives of the Bay-Delta counties were elected to “protect” the interests of their constituents. These interests include local land use, tax revenues, public health and safety, environmental protection, flood management, economic development, agricultural stability, recreation, water resources and water rights. The proposed structure and functions of the Council and the DPC in this regard is therefore of concern. The DPC should not have authority to alter or to override lawful decisions made by counties and other local governmental entities.

**Special Area Management Plans.** The draft Strategic Plan proposes that specific areas critical to Delta management should be the subject of Special Area Management Plans (SAMPs) under the Coastal Zone Management Act (CZMA). Examples given include areas within the secondary zone where greater protection of state interests is required, and peripheral areas where greater protection of state interests is required. (Page 19)

According to the NOAA Office of Ocean and Coastal Resource Management website, SAMPs are time and resource intensive, and a designated objective and neutral leader or lead agency is needed to sponsor, organize and move the planning process forward. Given the proposed governance structure it would appear that the DPC would be the most appropriate entity to undertake these efforts. However, RCRC questions how the DPC can be considered an “objective and neutral” agency when it is specifically required to ensure consistency with the CDEW Plan.

**California Delta Conservancy.** The draft Strategic Plan proposes the creation of the California Delta Conservancy (Conservancy), which would assume responsibility for state ecosystem-related projects now underway in the Delta.

If a Conservancy is formed, RCRC supports the language in the Strategic Plan that the state should “ensure that there is adequate local representation on the Conservancy’s governing body” and that the Conservancy “be given adequate funding for both acquisition and ongoing maintenance of land.” (emphasis added). (Page 19)

**Delta Operations Team/California Water Utility and the CDEW Plan.** The draft Strategic Plan proposes that a Delta Operations Team comprised of representatives of state and federal agencies coordinate and make operational decisions on water inflows, outflows and exports on a day-to-day basis. Additionally, it is proposed that a new California Water Utility assume ownership, operation and maintenance of the State Water Project and operate the project in accordance with the Plan developed by the Council. (emphasis added) (Page 20)

The draft Strategic Plan also states that the State Water Resources Control Board (State Water Board) should incorporate and approve the CDEW Plan developed by the Council through a water quality control plan amendment and associated water rights decision or other proceeding. Additionally, the draft Strategic Plan states that the State Water Board should regulate based on existing water rights and on the water quality and flow standards identified in the CDEW Plan adopted by the Council. (emphasis added) (Page 21)

RCRC appreciates the statement that the State Water Board should regulate based on existing water rights. RCRC believes that a discussion of existing water right law, including area-of-origin, watershed-of-origin and county-of-origin protections should be included in the Strategic Plan document and appropriate assurances provided. Please see additional comments that follow.

The State Water Board has been delegated the authority to implement the federal Clean Water Act and California water rights and water quality law. RCRC, therefore, questions why it is proposed that the Council develop water quality and flow standards instead of the State Water Board. In addition to having the authority, the State Water Board is a more objective and neutral body than the proposed Council since the Council's highest purpose is to ensure that the Delta Vision Task Force's primary co-equal values are implemented. We are especially concerned in light of the fact that the draft Strategic Plan does not expressly include recognition and protection of water rights – including the rights established by the area-of-origin statutes – in its stated goals.

The establishment of basic Delta environmental water needs (quality and flow) should be established through the State Water Board Water Quality Control Plan process and implemented through the State Water Board's water rights and water quality authority. RCRC will oppose the setting of water quality and flow standards as a function of the Council if it is contained in the final Strategic Plan. Additionally, the State Water Board must not be put in the position of "rubber-stamping" Council decisions.

**Science.** RCRC agrees with the importance of science in the Delta decision-making process. The creation of an independent Science and Engineering Board, in addition to permanent Science Program staff, deserves consideration. There is, however, concern relating to an expanding bureaucracy with its related cost. (Pages 21/22)

**California Delta Ecosystem and Water Plan.** The draft Strategic Plan calls for a legally binding CDEW Plan that clarifies the roles of existing agencies in the Delta and makes full use of existing laws and constitutional principles governing water. The draft Strategic Plan describes a number of functions that the CDEW Plan must fulfill. (Pages 23)

One of the functions identified is "Establish targets and management objectives for water supply reliability for all users of water diverted upstream, within, and exported from the Delta." RCRC

requests elaboration on this identified function so that we may comment based on an understanding of what exactly is being proposed.

**Reasonable Use/Public Trust/Water Rights.** The draft Strategic Plan mentions the “reasonable use doctrine” and the “public trust doctrine” various times throughout the document. The impression is given that enforcement of the reasonable use doctrine and the public trust will somehow result in significant amounts of water currently used being made available for other uses. As an example, one such statement is that “...water required to support and revitalize the Delta will not be purchased but will be provided within the California’s systems of water rights and the constitutional principles of reasonable use and public trust.” (Pages 25/26)

This statement and other similar statements, written and verbal, made during the Delta Vision process have been and are of great concern to RCRC. The reasonable use and public trust doctrines are important limitations on the exercise of all water rights. As the California Supreme Court has made clear in its decision in *City of Barstow v. Mojave Water Agency* (2000), however, the determination whether a particular use of water is unreasonable must be made on a fact specific, case-by-case basis, with a focus on individual water use practices. Moreover, in the *Audubon* case, the Court held that all uses of water, including public trust uses, must conform to the constitutional requirement of reasonable use. These decisions cast significant doubt on the authority of the proposed Council to reallocate substantial quantities of water from existing water right holders to the new purpose of supporting and revitalizing the Delta – at least without extensive water rights hearings before the State Water Board and/or litigation.

**Environmental Justice.** The draft Strategic Plan addresses the issue of environmental justice for communities within, and dependent upon, the Delta as a result of resource management decisions made in the state’s interest. Criteria listed include “Changes in the cost of domestic water and the impact of affordability for low-income communities or communities of color.” And “The potential existence of regressive fees and taxes.” (Page 24)

The draft Strategic Plan does not consider communities other than those within, or dependent upon, the Delta. Small and/or disadvantaged communities upstream of the Delta will be impacted as a result of proposed resource management decisions. Clearly proposals such as a per-acre-foot fee, development of upstream TMDLs, and the imposition of advanced treatment (solely) upon upstream wastewater treatment plants will impact affordability of water and wastewater for small and/or disadvantaged communities.

Environmental justice considerations given to in-Delta and export communities should likewise be applicable to similar upstream communities.

**Finance.** The draft Strategic Plan makes a number of statements relating to financing the activities of the CDEW Plan. (Pages 25-28)

The draft Strategic Plan states that access to state funding for any purpose related to the implementation of the CDEW Plan must be contingent upon, among other things, “satisfying all applicable water quality and ecosystem regulations determined to protect the resources and values of the state”. (Page 26)

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RCRC has grave concerns with this provision. The following is one example as to why this language is problematic. Small and/or disadvantaged communities throughout the state are on failing septic systems or have old and undersized wastewater treatment plants that cannot meet current water quality standards. Such systems can cause health and safety problems, endanger surface water uses, and/or pose a threat to groundwater supplies. Due to their small rate base, small and/or disadvantaged communities lack the economies of scale to build and maintain adequate wastewater systems. RCRC doubts that it is the intent of the Delta Vision Task Force to deny state funding desperately needed to bring small and/or disadvantaged communities into compliance with water quality standards.

The draft Strategic Plan states that the estimates suggest that the range of capital expenditures required for the Delta in the next 10 to 15 years will range from \$12 to \$24 billion, with a high estimate of \$80 billion. These figures only cover conveyance, Delta ecosystem revitalization projects, and levee improvements. As noted, no attempt has been made to estimate annual operating costs. (Pages 26/27)

The draft Strategic Plan points to the “beneficiary pays” principle as one starting point for analyzing possible financing systems. Additionally the draft Strategic Plan states that there should be a per-acre-foot fee levy on water diversions within the Delta watershed and a separate fee on any water conveyed through or around the Delta.

RCRC fails to see how water diverters above the Delta will benefit from implementation of the CDEW Plan. If there are perceived benefits it might be helpful to expand upon this point. Likewise, exporters of water from the Delta are likely to question why they should pay a per-acre-foot fee on any water conveyed through or around the Delta in addition to paying for the costs related to conveyance. The exporters have indicated a willingness to pay for the construction of new and improved conveyance, and RCRC assumes the cost of operations and maintenance (O&M) as well.

Additionally, a very important point that must be considered is that a per-acre-foot fee will negatively impact the ability of locals to raise local cost share revenue. The most recent draft water bond proposals call for a 50% local match in order to receive grant monies.

RCRC would welcome clarification as to which entity is proposed to collect the fee, and specifically for what use(s) the fee is proposed to be used.

RCRC also requests an elaboration on the statement “Allow no subsidized use of California resources.” (Page 28)

### **The Delta Ecosystem**

The draft Strategic Plan contains a number of proposals to revitalize the Delta ecosystem that will significantly impact the Delta counties. As you know, the impacted Delta counties are working together to jointly respond to the draft Strategic Plan in this area as well as other areas of concern. RCRC supports their efforts in this regard, and would like to note our concern as well about the impact of the Delta Vision Task Force’s proposals (large scale conversion of Delta farmlands to habitat, floodways, etc.) upon agriculture in the Delta.

On a technical note, the draft Strategic Plan includes an action item to improve conjunctive use programs that shift highest exports to wettest periods and lowest exports to driest periods. (Emphasis

added) (Pages 38/39) Please note that conjunctive use refers to surface to groundwater storage, but the text in the draft Strategic Plan refers solely to upstream reservoirs and on-stream reservoirs.

### **Water Supply and Reliability**

**Regional Water Self-Sufficiency.** The draft Strategic Plan lists a number of specific actions to be analyzed, and implemented if judged effective, to increase regional water self-sufficiency. RCRC has no comment on these actions at this time.

**Water Transfers.** The draft Strategic Plan discusses the need to streamline the water transfer regulatory approval process and transfers involving the temporary or long-term reduction in agricultural consumptive use. (Pages 49/50) RCRC appreciates the recognition in the draft Strategic Plan of the need to consider, prior to any such transfer, groundwater recharge impacts and the water needs of other agricultural water users within the watershed. In addition, RCRC urges the Delta Vision Task Force to include in the Strategic Plan a requirement that the effects of proposed water transfers on local economies, social services, and tax revenues also be considered.

**Source Control.** The draft Strategic Plan states that human-generated contaminants should be controlled at the source, before they enter the Delta. Among the specific actions to be analyzed and implemented as judged effective is “Implement advanced treatment at all wastewater treatment plants discharging to Delta source waters and implement source control programs for their service areas.” (Page 55)

This proposed action is problematic for several reasons. Imposition of an advanced treatment requirement should be made on a facility by facility basis with consideration of discharge conditions and dilution factored into the equation.

RCRC has commented previously on the plight of small and/or disadvantaged communities that, due to their small rate base, do not have the economies of scale necessary to build and maintain adequate wastewater systems. Funding to assist these small communities is scarce. Proposition 84 did not contain funding for the Small Communities Wastewater Grant Program (SCWG Program), and all of the funds from Propositions 40 and 50 (2002) have been committed. With a cap of \$2 million, the SCWG Program was just one piece of the puzzle as small communities struggle to cobble together enough funds from various sources to upgrade or build new facilities. Where successful, these small and/or disadvantaged communities often pay significantly more than the average monthly sewage bill in large urbanized areas. Significant funding for small and/or disadvantaged communities would have to accompany any such requirement for advanced treatment.

**Groundwater.** The draft Strategic Plan lists various specific actions to be analyzed and implemented, if judged effective, that would change the legal and regulatory framework associated with groundwater banking agreements and operations. The actions include revisions to place-of-use restrictions and exempting banked groundwater from ordinances that require permits for out-of-county exports. (Pages 56/57) Additionally, the draft Strategic Plan calls for comprehensive basin management planning to address the availability, quality, and managed use of regional groundwater resources. Specific actions to be analyzed and implemented, if judged effective, include requiring General Plans, etc. to identify how land use plans will protect areas needed for groundwater recharge.

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Local control of groundwater is very important to RCRCs membership. RCRC will actively participate in discussions on these groundwater related issues as they are analyzed for possible implementation.

**Wet Period Diversion.** The draft Strategic Plan states that diversions from the Delta should occur during wet periods (both seasonal and annual) to the greatest extent feasible, and that patterns of diversions and the methods of conveyance must be responsive to ecosystem needs, even if they are not the sole or primary cause of the ecosystem's distress. (Page 59) Additionally, the document puts forward the concept of establishing a level of reliability for Delta exports that is consistent with average quantities diverted in the 1990s. It is also noted that this will require potentially significant increases in Delta and export area conveyance capacity as well as upstream and export area groundwater and surface storage. (Page 61)

One of the fundamental flaws of the Delta Vision Task Force's Delta-centric focus on the Delta ecosystem is the lack of recognition, to date, of the potential impacts of proposed actions upon the ecosystems upstream of the Delta. RCRC urges that the Strategic Plan contain assurances that potential impacts to upstream ecosystems will be analyzed and that these ecosystems will not be degraded as a result of actions taken to benefit the Delta Vision's "co-equal values."

While RCRC believes that setting a "goal" as to a certain level of water supply reliability will assist exporters in their planning efforts, it must be recognized that the state cannot make a firm commitment in this regard. As noted in the January 2008 California Water Reporter article by Antonio Rossmann titled *Bring Us Law To Match Our Rivers*, "In addition to benefiting the watershed of origin, this doctrine (watershed of origin doctrine) serves the entire state by discouraging appropriation to the edge of un-sustainability."

RCRC also believes that the draft Strategic Plan should address head on, in a more direct fashion throughout the document, the fact that absent new and improved surface and groundwater storage the system does not have the capacity to meet the needs of the Delta Vision Task Force identified co-equal values.

The draft Strategic Plan goes on to discuss that, in addition to addressing the benefits for export water reliability and ecosystem health, the investigations into a dual-Delta water conveyance system must address: 1) the impacts on in-Delta water supply and quality; 2) impact on flood threats; 3) security of an isolated facility to earthquake and flooding; 4) stability in the face of sea level rise; 5) costs and fiscal impact on Delta levee maintenance and rehabilitation and flood response; and, 6) security of Delta infrastructure and agricultural production.

This list of additional considerations is incomplete. Issues to be addressed must include assurances that programs or facilities implemented or constructed in the Delta will not result in redirection of unmitigated, significant adverse impacts to the upstream areas of origin. Areas of origin will not support a dual conveyance facility with significant increases in Delta and export conveyance capacity unless: 1) assurances are provided that their priority to water resources will be protected; and, 2) programs or facilities implemented or constructed in the Delta will not result in redirection of unmitigated, significant adverse impacts to the counties and the watersheds of origin.

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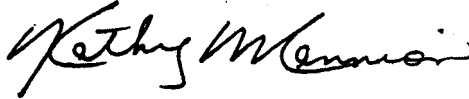
Governor Schwarzenegger's and Senator Feinstein's water bond proposal dated July 9, 2008, contains language dealing with both of these issues. RCRC urges that the Delta Vision Task Force likewise incorporate these protections into the Strategic Plan.

**Surface Storage Investigations.** RCRC supports the expedited completion of the CALFED surface storage investigations and the implementation of storage options that optimize the capture of wet-period flows.

**Delta as a Place.** RCRC refers the Delta Vision Task Force to the previous discussion on SAMPs. As it relates to flood protection and improving upstream flood management, RCRC agrees that much can be done upstream through watershed management activities if funding assistance were to be provided.

In conclusion, RCRC thanks you for the opportunity to submit these comments on the second staff draft Strategic Plan. Future comments are likely to include additional issues not addressed in these preliminary comments. RCRC looks forward to working with you during this phase of the Delta Vision process. Please feel free to contact me with any questions or comments at (916) 447-4806 or [kmannion@rcrcnet.org](mailto:kmannion@rcrcnet.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Mannion".

Kathy Mannion  
Director of Water and Power

c: Governor Arnold Schwarzenegger  
Members, Delta Vision Blue Ribbon Task Force  
Members, Delta Vision Committee  
Members, State Water Resources Control Board